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SENATE BILL 118

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph A. Fidel

AN ACT

RELATING TO UNFAIR TRADE PRACTICES; REQUIRING NOTICE AND OPPORTUNITY FOR MEDIATION BEFORE FILING A CLAIM FOR A PRIVATE REMEDY; REQUIRING COMPLETION OF MEDIATION BEFORE FILING A CLAIM; PROVIDING FOR EXCEPTIONS; AUTHORIZING THE COURT TO ORDER MEDIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 57-12-10 NMSA 1978 (being Laws 1967, Chapter 268, Section 8, as amended) is amended to read:

"57-12-10. PRIVATE REMEDIES. --

A. Except as provided in Subsection C of this section, before a person may file a claim seeking a private remedy pursuant to the provisions of this section, the person shall:

(1) give written notice in reasonable detail

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1 to the person against whom the remedy is claimed of the
2 specific claim and amount of damages and expenses to be
3 claimed; and

4 (2) give the notice to the person at least
5 forty-five days before filing the claim.

6 B. A person that gives notice or receives notice
7 pursuant to Subsection A of this section may request in writing
8 during the forty-five-day notice period that the parties
9 attempt to settle the claim in mediation. If a request for
10 mediation is made, the parties shall choose a mutually
11 acceptable mediator and enter into mediation; a claim shall not
12 be filed before completion of the mediation process, except as
13 provided in Subsection C of this section.

14 C. If the requirement for the forty-five-day notice
15 or completion of mediation will result in the expiration of the
16 statute of limitations, a person may file a claim without
17 following the notice or mediation requirements of Subsections A
18 and B of this section.

19 D. The court may order mediation at the request of
20 any party to the suit and may stay all proceedings until the
21 mediation is completed. If the parties do not agree on a
22 mutually acceptable mediator, the court shall appoint the
23 mediator. The parties shall share the cost of the mediator
24 equally unless otherwise agreed to by the parties.

25 [A.] E. A person likely to be damaged by an unfair

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1 or deceptive trade practice or by an unconscionable trade
2 practice of another may be granted an injunction against it
3 under the principles of equity and on terms that the court
4 considers reasonable. Proof of monetary damage, loss of
5 profits or intent to deceive or take unfair advantage of any
6 person is not required. Relief granted for the copying of an
7 article shall be limited as to the prevention of confusion or
8 misunderstanding as to source.

9 [B.] F. Any person who suffers any loss of money or
10 property, real or personal, as a result of any employment by
11 another person of a method, act or practice declared unlawful
12 by the Unfair Practices Act may bring an action to recover
13 actual damages or the sum of one hundred dollars (\$100),
14 whichever is greater. Where the trier of fact finds that the
15 party charged with an unfair or deceptive trade practice or an
16 [~~unconscionable~~] unconscionable trade practice has willfully
17 engaged in the trade practice, the court may award up to three
18 times actual damages or three hundred dollars (\$300), whichever
19 is greater, to the party complaining of the practice.

20 [C.] G. The court shall award [~~attorneys'~~] attorney
21 fees and costs to the party complaining of an unfair or
22 deceptive trade practice or unconscionable trade practice if
23 [~~he~~] the party prevails. The court shall award [~~attorneys'~~]
24 attorney fees and costs to the party charged with an unfair or
25 deceptive trade practice or an unconscionable trade practice if

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1 it finds that the party complaining of such trade practice
2 brought an action [~~which~~] that was groundless.

3 [~~D.~~] H. The relief provided in this section is in
4 addition to remedies otherwise available against the same
5 conduct under the common law or other statutes of this state.

6 [~~E.~~] I. In any class action filed under this
7 section, the court may award damages to the named plaintiffs as
8 provided in Subsection [~~B~~] F of this section and may award
9 members of the class such actual damages as were suffered by
10 each member of the class as a result of the unlawful method,
11 act or practice. "